

OPINIONS BY REGIONAL ATTORNEY ON
CERTAIN SPECIFIED TYPES OF GROUP SERVICE LOANS

In order to clarify some of the questions which have developed in connection with the extent of our authority to make certain types of group service loans, several cases which have been considered as "borderline" were referred to the Regional Attorney for his opinion. The following are the hypothetical proposals and the opinions relating to each case:

A. Sample Cases

1. Four participants seek loans of \$1,500 each in order to purchase a crawler tractor and dozer blade. The members of the service have sufficient work on their own farms to keep the equipment busy for one year. A four year term is requested for the loans. Sufficient clearing and leveling work is actually signed up, however, on other farms in the vicinity to provide remunerative work over the entire period of the loans.
2. Would the fact that the dozer equipment was to be used in logging operations off the farm or for clearing snow from county roads during the winter months only affect the eligibility of the foregoing group for an FSA group service loan.
3. Two veterans propose to borrow \$2,000 each from the FSA so that they may purchase a well drilling outfit which the Army has declared surplus. Both are part time farmers and each needs a well. Work on their own farm units will take only two months. Sufficient drilling on other farms has been signed up to provide for two years of operation. The loans are set up for three years, however. During the last year of the loan period the service will necessarily be operated on a semi-commercial basis.
4. Six farmers living in one locality would like to build jointly a potato cellar which they would use for storing their own production from year to year. The storage facility would cost \$10,800. Four of the six participants request loans of \$1,800 each. It is not planned to incorporate the service. One of the members would deed to the group the land on which the cellar is to be constructed. Commercial operation is not contemplated since each joint owner would ordinarily use his allotted space for his own use, but with joint use of the cellar planned for grading operations during the winter months.
5. Ten wheat farmers would like to build a rail-side storage elevator for handling their own crops of grain. It is planned that the elevator would require investment of \$10,000. Consequently, loans of \$1,000 each would be needed by the members

QUESTIONS OF INTEREST TO THE PUBLIC

It is the policy of the Government to make available to the public information which is in its possession and control, and to make such information available to the public in a form which is understandable and useful to the public. This policy is based on the principle that the public has a right to know the facts and circumstances which are in the possession and control of the Government, and that the Government has a duty to make such information available to the public in a form which is understandable and useful to the public.

A. General Policy

The first principle of the policy is that the Government has a duty to make available to the public information which is in its possession and control, and to make such information available to the public in a form which is understandable and useful to the public. This principle is based on the principle that the public has a right to know the facts and circumstances which are in the possession and control of the Government, and that the Government has a duty to make such information available to the public in a form which is understandable and useful to the public.

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The third principle of the policy is that the Government has a duty to make available to the public information which is in its possession and control, and to make such information available to the public in a form which is understandable and useful to the public. This principle is based on the principle that the public has a right to know the facts and circumstances which are in the possession and control of the Government, and that the Government has a duty to make such information available to the public in a form which is understandable and useful to the public.

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of the service. The elevator would be located on land leased from the railroad company on a ten year basis. The loans are set up on a four year repayment period. Incorporation is not contemplated and the facility would not be used for commercial storage purposes.

6. If it was intended that during a given year when certain of the members of the foregoing two services who might have no need for their respective shares of the storage space would be permitted to lease such space to other farmers, would the eligibility situation be altered in any way.

B. Opinions

1. The primary question in the first sample case involves limitation No. V G6 of FSA Instruction 731.2 which reads as follows: "The operation of the service shall be primarily for the members of the group with any direct revenue-producing activities being incidental to such operation." Loans of \$1500 to each of four participants to finance the purchase of a crawler tractor and dozer blade are loans which are typical of the group service idea. The testing feature of the first sample case is that the participants have sufficient work on their own farms to keep the equipment busy for one year only and the loan is desired for a four year term. When the participants have finished clearing and leveling their own farms they will then engage in the commercial use of the equipment on other farms in the vicinity. The question is whether this direct revenue-producing activity is incidental to the operation of the service.
2. The fact that the dozer equipment is to be used in logging operations off the farm or for clearing snow from the county roads during the winter months involves the same safeguard. Are these direct revenue-producing activities incidental to the operation of the service?
3. The third case concerns the further exploitation of this principle. Each of two veterans needs a well on his farm. A well drilling outfit can be purchased from army surplus equipment for \$4000. The veterans would borrow \$2000 each, purchase the equipment and drill the wells on their own farms which would take only two months. The loans will be set up for three years duration and during the remainder of the loan period the well drilling machinery will be operated for hire.

In testing whether you are on the safe or perilous side of your authority to make group service loans it might be helpful to consider whether you would be authorized to make a standard loan to one farmer for the same purpose. FSA Instruction 731.1 V states that loans may be made to provide for family and farm expenditures which may include but are not limited to livestock, farm equipment furnishings, etc.

of the property. The above would be located on land leased from the railroad company on a long term basis. The lease would be on a long term basis. The railroad company is not interested in the facility would not be used for commercial purposes.

It was intended that during a five year term certain of the members of the property the services who might have no need for their respective shares of the shares would be permitted to leave such shares to other persons, while the facility situation be altered in any way.

2. Outline

The primary question in the first group case involves limitation for the 1951-1952 period. The first group as follows: "The operation of the service shall be primarily for the benefit of the group and any direct revenue-producing activities being incidental to such operation." Items of \$100 to each of four participants to finance the purchase of a certain number and dates which are typical of the group service items. The first group of the first group was to have the participants have sufficient work on their own items to keep the equipment busy for a year only and the items to be used for a year term. When the participants have finished clearing and leveling their own items they will then engage in the commercial use of the equipment on other items in the vicinity. The question is whether this direct revenue-producing activity is incidental to the operation of the service.

The fact that the group equipment is to be used in logging operations all the time or for clearing snow from the property during the winter months involves the same situation. The question is whether revenue-producing activities incidental to the operation of the service.

The third case concerns the further exploitation of this property. Each of the various needs will be in the form of a well drilling outfit can be purchased for one year. A well drilling outfit for \$1000. The company would receive \$1000 and the participants the equipment and well the wells on their own terms. The well would last only one month. The items will be set up for three years. Operation and during the term of the well the well drilling activity will be operated for that.

In passing to the next group you are on the side of the side of the authority to the group service items it might be helpful to consider whether you would be authorized to make a statement to the group for the same purpose. The first group of \$1000 is stated that items may be made to provide for family and for expenditures which are not but are not limited to livestock, farm equipment, furniture, etc.

FSA Instruction 731.2 V B provides that RR loan funds may be used for the purchase of property to be used in group services, provided such expenditures are in accordance with the purposes for which loan funds may be used as outlined in FSA Instruction 731.1. In the light of these instructions it seems doubtful if the purchase of a well drilling outfit could be considered as "family and farm expenditures" of the kind for which standard loans could be made. The purchase of a crawler tractor for clearing the land would seem to be more in line with authorized purposes, but where the persons seeking the loans have use for the equipment for one year only you have the question of whether the intent of the participants is primarily to provide a service to the group or to provide equipment for revenue-producing purposes. It is an administrative question of degree whether this is farming equipment or commercial equipment under the circumstances.

4. Here six farmers desire to build jointly a potato cellar; the facility will cost \$10,800; four of the six participants request loans of \$1800 each; one member would deed to the group the land on which the cellar is to be constructed; commercial operation is not contemplated. Aside from the fact that none of the loan funds may be used for the purchase or lease of the land on which the facility is to be located (FSA Instruction 731.2 V G3), there would appear to be no question of your authority to make these loans. The \$1500 loan limitation is not applicable to group service loans (Region XI Instruction 731.1 B II-A 1). However, your instructions require that borrowers who obtain loans to aid in establishing joint-owner group services secure their respective loans by a mortgage on the property purchased for use in the service, and that this mortgage be executed by all of the parties having and interest in the property. This will permit enforcement of the lien against the entire property in the event of a default in the payment of any individual note secured thereby, or in the event of a breach by any individual borrower of any of the covenants or provisions of the mortgage (FSA Instruction 731.2 V E 1). This requirement would appear to bar this type of loan where all of the joint owners are not borrowers.
5. Ten wheat farmers wish to build a rail-side storage elevator for handling their own grain. Loans of \$1000 to each member will be needed. The elevator will be located on land leased from the railroad company on a ten year basis. The loans are to be set up on a four year repayment period. The facility will not be used for commercial storage. Assuming that none of the funds are to be used for the purchase or lease of land, the loan would appear to be authorized.
6. It is further contemplated that when certain of the members of the storage facility groups described in situations numbered IV and V above might have no need for their

respective shares of the storage space they would be permitted to lease such space to other farmers. This would not alter the opinions above expressed, provided such direct revenue-producing activities remain incidental to the main purpose of the service.

It is probable that these opinions will serve to open up a field for development of group services which may heretofore have been considered as being outside the scope of our authority. Any large scale services such as those outlined above should be cleared with the district supervisor before approval of the loans involved by the county supervisor.

